

REVISED ADDENDUM
FINAL STATEMENT OF REASONS
DEPARTMENT OF FOOD AND AGRICULTURE
SUBMISSION OF REGULATIONS PERTAINING TO
Section 2850, 2851, 2852, 2853, 2854, 2855, 2856, and 2857
Title 3, California Code of Regulations

Update on Initial Statement of Reasons/Policy Statement Overview

The initial statement of reasons/policy statement overview are supplemented with the following:

Update on Factual Basis

The factual basis for the determination by the Department that adoption of Sections 2851, and 2852, 2853, 2854, 2855, 2856, and 2857 are necessary is as follows:

As set forth in statute, the Rice Certification Act of 2000 (The Act) was established to ensure that consistently high quality rice is produced in California. The Act directed, a committee as an administrator to identify rice varieties that have characteristics of commercial impact and to establish terms and conditions for planting, production, harvesting, transporting, drying, storing, handling rice, seed application, field buffer zone, handling requirements, and identity preservation requirements.

Review of Varieties

The evaluation of the rice varieties selected for inclusion in these proposed regulations are guided by the requirements of the Act and in particular the definition in Food and Agricultural Code. Section 55009 provides in part that “characteristics of commercial impact” mean characteristics that may adversely affect the marketability of rice in the event of commingling with other rice and may include, but are not limited to, those characteristics that cannot be visually identified without the aid of specialized equipment or testing, those characteristics that create a significant economic impact in their removal from commingled rice, and those characteristics whose removal from commingled rice is infeasible.

The Committee thoroughly reviewed each of the rice varieties specified in the regulations using the following criteria.

Physical Characteristics

- 1) Bran Color
- 2) Endosperm Color
- 3) Kernel Size
- 4) Kernel Shape

- 5) Other

Functional Characteristics

- 1) Aromatic
- 2) Unique Processing Characteristic
- 3) Starch Characteristic
- 4) Other

Genetic Traits

- 1) Transgenic Derived Traits
- 2) Other

Industry Practices

- 1) Is the variety commercially co-mingled in the paddy form?
- 2) Is the variety commercially segregated?
- 3) Does the rice have the presence of diseases or pests foreign to California?
- 4) Other

This criteria captures the traits and characteristics of each variety that are known in the industry to have the potential to impact commercial markets.

There are over 40 rice varieties produced in California and the Committee is proposing to regulate less than half of that number. Importantly, the acreage represented by the varieties specified in the regulations is less than 15% of California rice production by volume.

Basis for Determination

There are two basic groupings of rice in the proposed regulations. In all cases, the determination of commercial impact was based on the rice varieties potential to impact the bulk of the industry's production – calrose rice. Calrose is the market class of rice that represents 80% of California rice production. Five varieties are classified as calrose and they are all commercially commingled. As our industry noted in its testimony before the legislature on Assembly Bill 2622, which created the California Certification Act of 2002, our markets have become increasingly quality conscious. As a result, purity of these rice varieties is an important market requirement.

The first grouping of rice varieties shares physical characteristics that when mixed with calrose rice either reduces the value or cause the need for additional processing. They have characteristics that include aromatic qualities, kernel size differences, starch differences and in some cases combinations of these traits. In addition, all of these rice varieties are currently commercially segregated.

These varieties are: A-201, A-301, Calmati 201, Akita Komachi, Calhikari 201, Calmochi 101, Calpearl, Hitomebore, Koshihikari, NFD 108, NFD 109, SP-2, Sasanishiki, Surpass, WRS-4431, Arborio and Calriso.

The second grouping of rice varieties has traits that include bran coloration that is vastly different than calrose. In fact, these varieties are grown specifically because they contain a colored bran layer. The coloration of the bran in these varieties is different than the light brown bran found on calrose rice. In addition, these varieties have a greater tendency to shatter and naturally propagate in the field causing weedy characteristics. As with the first group of rice varieties, all of these varieties are currently commercially segregated.

These varieties are: LBJ 489 “Black Japonica”, LWE 218 “Wehani”, HKB 102 “Hong Kong Black”, Sun West “Rojito” and Sun West “Black Rice”.

Inadvertent commingling of any of the foregoing varieties with calrose rice creates significant commercial impact for the industry. In some instances additional processing would be required to separate the kernels by size or color. However, processing would not solve the problem in the case of aromatic rice varieties and arborio type rices when mixed with other rice varieties. Since there is no known process for separating such rice, the only option is to sell contaminated lots of rice as animal feed or as low-grade rice.

The rice varieties included in the proposed regulations are all currently commercially segregated in the field, drying facilities and in the mills. These regulations are intended to standardize the industry’s growing, handling and milling processes.

Section 2851(b)

Subsection (b) was added to ensure flexibility for producers of rice specified in this section in order to utilize more stringent protocol than that of Section 2851. A December 31 deadline was proposed to guarantee that the Committee would have adequate time to review the proposed protocol and respond to the producer before the commencement of the growing season.

This subsection allows the producer the flexibility to utilize more stringent standards in the production of rice that coalesce with their own production standards. In practice, a grower could conceivably desire to use a closed metal container to transport his rice instead of a tarp. The closed container would be more effective in ensuring the containment of rice, but without subsection (b), he would not be allowed due to the “at least 6 mils” tarp requirement. Subsection 2851(b) would allow the producer to propose to the Committee this more restrictive method of transportation. The Committee would then review the proposed protocol to ensure that it is more restrictive than subsection 2851(a).

Section 2851(c), 2852 (b)

This section allows the Commission, pursuant to Food and Agricultural Code Section 55045 to review and investigate complaints regarding alleged violations. Section 2851(c) and 2852(b) clarify the Commission’s role in ensuring that the regulations are being observed. A two-year records retention was added to ensure the availability of evidentiary records in the event a complaint regarding an alleged violation was submitted.

Informal Hearing Procedures

The informal hearing procedures in Sections 2853-2856 were modeled after informal hearing procedures found in the California Code of Regulations. Those can be located at Title 3, Division 2, Chapter 9, Article 1, Sections 1301.1-1301.3, and 1310-1310.03. The Department in cases of quarantined animals utilizes this informal hearing process. This process would be a parallel with the existent enforcement process utilized by the Department to address alleged violations with respect to animal health.

Economic Impact on Affected Businesses

The Department has initially determined that these proposed regulations would result in an estimated cost up to \$7.50 an acre. The impact on the seed industry will be insignificant. But, the Department would like to clarify these assessments by stating that State law provides that assessments to fund the operational costs of the identity preservation program will be paid by (1) persons selling or distributing the rice seed subject to the proposed regulation in an amount not to exceed five dollars (\$5.00) per hundredweight; or (2) the first in-state handler of paddy or brown rice subject to the proposed regulation, or of seed brought into the state from outside California subject to the proposed regulation, in an amount not to exceed ten cents (\$0.10) per hundredweight. The actual assessment rate will be established once the program is implemented.

This proposed regulation applies only to persons growing and handling the following rice varieties: A-201, A-301, Calmati 201, Akita Komachi, Calhikari 201, Calmochi 101, Calpearl, Hitomebore, Koshihikari, NFD 108, NFD 109, SP-2, Sasanishiki, Surpass, WRS-4431, Arborio, Calriso, Koganemochi, LBJ 489 "Black Japonica," LWE 218 "Wehani," HKB 102 "Hong Kong Black," Sun West "Rojito," and Sun West "Black Rice."

Comments Received During 45-Day Comment Period

The Department did not receive any written comment during the 45-day comment period.

Information Relied Upon

The California Rice Certification Act of 2000 was available in the document file for the public to review during the 45-day comment period.